

## SENATE BILL NO. 494

INTRODUCED BY J. COBB, F. THOMAS, BECK, DOHERTY

A BILL FOR AN ACT ENTITLED: "AN ACT ~~CHANGING THE RATE OF~~ REVISING THE LAWS RELATED TO THE RETAIL TELECOMMUNICATIONS EXCISE TAX TO MAKE IT REVENUE-NEUTRAL AS COMPARED TO THE TELEPHONE LICENSE TAX AND PROPERTY TAX PROVISIONS THAT IT SUPPLANTED; ~~CLARIFYING THE TAXATION OF MOBILE TELECOMMUNICATIONS SERVICES AND ROVING TELECOMMUNICATIONS SERVICES; REPEALING~~ SUSPENDING THE ADVANCED TELECOMMUNICATIONS INFRASTRUCTURE TAX CREDIT; PROVIDING FOR THE ESTABLISHMENT OF AN ELECTRONIC DATABASE CONTAINING ADDRESSES FOR PLACES OF PRIMARY USE UPON AUTHORIZATION OF A LOCAL MOBILE COMMUNICATIONS TAX OR FEE; AMENDING ~~SECTION~~ SECTIONS 15-53-129 ~~AND 15-53-130 AND 15-53-202, MCA; REPEALING SECTIONS 15-53-201, 15-53-202, AND 15-53-203, MCA;~~ AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, ~~AND AN AN~~ AN APPLICABILITY ~~DATE~~ DATES DATE, AND A TERMINATION DATE."

WHEREAS, the Retail Telecommunications Excise Tax Act, House Bill No. 128, 56th Legislature (Chapter 426, Laws of 1999), was enacted as a part of the 1999 Legislative Session's economic development package, replacing an archaic telephone license tax and an illogical and confusing array of property tax provisions with an excise tax that would foster Montana's long-term economic growth and ensure that Montana will have the necessary telecommunications infrastructure needed to be competitive for jobs and income for the future; and

WHEREAS, as enacted, the purpose section of the Retail Telecommunications Excise Tax Act, in 15-53-128(4)(c), stated that one of the reasons for imposing a replacement tax was to "preserve the revenue base of the existing property tax system for taxing jurisdictions in the state"; and

WHEREAS, as enacted, in the purpose section of the Retail Telecommunications Excise Tax Act, in 15-53-128(7), the legislature declared a "compelling public need to modify the existing system of property taxation . . . to ensure competitive neutrality and constancy of revenue to taxing jurisdictions in the state of Montana"; ~~and,~~

~~WHEREAS, it was stated during the opening statement on House Bill No. 128 in the Senate Taxation Committee that "... every effort has been made to make this revenue-neutral and to make sure~~

1 ~~that state, local governments, and schools are kept whole and that consumers are not affected~~  
2 ~~negatively"; and~~

3 ~~—— WHEREAS, a major proponent of the bill in the Senate Taxation Committee testified that "[the tax]~~  
4 ~~replaces the loss of revenues to local and state government from property tax reduction with a~~  
5 ~~competitively neutral excise tax"; and~~

6 ~~—— WHEREAS, other proponents of the bill reiterated that the bill was revenue-neutral; and~~

7 ~~—— WHEREAS, when a member of the Senate Taxation Committee asked about the fiscal note for the~~  
8 ~~bill, the answer was that under a revised fiscal note, there was apparently a deficit in revenue that may~~  
9 ~~have been caused by calculating in federally made telephone calls, but that "it was not the intention of this~~  
10 ~~bill to raise excess revenue or to cause a black hole"; and~~

11 ~~—— WHEREAS, another member of the Senate Taxation Committee asked a major proponent of the~~  
12 ~~bill if "the concept was to be revenue-neutral, which means the same amount of tax dollars spread over~~  
13 ~~the same number of customers, so the average tax per customer should be the same", and the proponent~~  
14 ~~replied that was correct; and~~

15 ~~—— WHEREAS, the Retail Telecommunications Excise Tax Act is not revenue-neutral.~~

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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19 ~~—— NEW SECTION. Section 1. Mobile telecommunications services. (1) Mobile telecommunications~~  
20 ~~services provided in this state to a customer, for which the charges are billed by or for the customer's~~  
21 ~~home service provider, are considered to be provided by the customer's home service provider.~~

22 ~~—— (2) All charges for mobile telecommunications services that are considered to be provided by the~~  
23 ~~customer's home service provider are subject to tax in this state if the customer's place of primary use~~  
24 ~~is located within the territorial limits of this state, regardless of where the mobile telecommunications~~  
25 ~~services originate, terminate, or pass through. The tax is imposed on the customer and must be collected~~  
26 ~~by the customer's home service provider ARE TAXABLE BY THE CUSTOMER'S HOME SERVICE PROVIDER AS PROVIDED~~  
27 ~~IN 4 U.S.C. 116 THROUGH 118 AND 4 U.S.C. 121 THROUGH 126. CHARGES FOR MOBILE TELECOMMUNICATIONS~~  
28 ~~SERVICES DO NOT INCLUDE ONE-WAY RADIO COMMUNICATIONS SERVICES AS INCLUDED IN 47 CFR 20.3, IN EFFECT ON~~  
29 ~~JUNE 1, 1999.~~

~~NEW SECTION. SECTION 2. ELECTRONIC DATABASE -- PLACES OF PRIMARY USE -- LOCAL OPTION  
TELECOMMUNICATIONS TAX. IF A LOCAL TAX OR FEE ON MOBILE TELECOMMUNICATIONS SERVICES IS AUTHORIZED BY LAW,  
THE DEPARTMENT SHALL DESIGNATE AN ELECTRONIC DATABASE PROVIDER FOR HOME SERVICE PROVIDERS OF MOBILE  
TELECOMMUNICATIONS SERVICES AS PROVIDED IN 4 U.S.C. 116 THROUGH 120 AND 4 U.S.C. 123 119 AND 124 120.  
IF THE DEPARTMENT DOES NOT DESIGNATE A PROVIDER OR IF THE LOCAL TAX OR FEE IS IMPOSED BEFORE A DATABASE  
PROVIDER IS DESIGNATED, A HOME SERVICE PROVIDER OF MOBILE TELECOMMUNICATIONS SERVICES MAY RELY UPON THE  
PROVISIONS OF 4 U.S.C. 120 FOR DETERMINATION OF A CUSTOMER'S PLACE OF PRIMARY USE.~~

**Section 1.** Section 15-53-129, MCA, is amended to read:

**"15-53-129. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) ~~(a)~~ "Customer" or "purchaser" means a person who acquires for consideration retail telecommunications services for use or consumption and not for resale.

~~(b) (i) For purposes of mobile telecommunications services, "customer" means:~~

~~(A) the person or entity that contracts with the home service provider for mobile telecommunications services; or~~

~~(B) if the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications services, but only for the purpose of determining the place of primary use.~~

~~(ii) The term does not include:~~

~~(A) a reseller of mobile telecommunications services; or~~

~~(B) a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.~~

~~(2) "Home service provider" means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.~~

~~(3) "Licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide mobile telecommunications services to the customer.~~

~~(4)(3) "Mobile telecommunications services" means commercial mobile radio services, as defined in 47 CFR 20.3, in effect on June 1, 1999.~~

~~(5) (A) "Place of primary use" means the street address representative of where the customer's~~

~~use of the mobile telecommunications services primarily occurs, which must be:~~

~~(a)(i) the residential street address or the primary business street address of the customer; and~~

~~(b)(ii) within the licensed service area of the home service provider.~~

~~(b) A HOME SERVICE PROVIDER IS RESPONSIBLE FOR OBTAINING AND MAINTAINING A RECORD OF A CUSTOMER'S PLACE OF PRIMARY USE AND FOR THE CORRECTION OF ERRONEOUS DATA RELATING TO THE PLACE OF PRIMARY USE AS PROVIDED IN 4 U.S.C. 121 AND 122.~~

~~(6) (a) "Reseller" means a provider who purchases mobile telecommunications services from another telecommunications services provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service.~~

~~(b) The term does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider's licensed service area.~~

~~(2)(7)(4)(2)~~ "Retail telecommunications" means the two-way transmission of voice, image, data, or other information over wire, cable, fiber optics, microwave, radio, satellite, or similar facilities that originates or terminates in this state and is billed to a customer with a Montana service address. The term includes but is not limited to local exchange, long-distance, two-way paging, wireless telephony, and related services.

~~(3)(8)(5)(3)~~ (a) "Sales price" means the consideration paid for the distribution, supply, furnishing, sale, transmission, or delivery of retail telecommunications services to the end-user customer.

(b) Sales price does not include:

(i) an amount added to the customer's bill because of a charge made pursuant to the tax imposed by this part;

(ii) charges added to a customer's bill under 10-4-201, 53-19-311 and 69-3-844;

(iii) federal excise taxes or other federally imposed charges or fees COLLECTED FOR AND REMITTED TO A FEDERAL GOVERNMENT ENTITY;

(iv) a charge for a dishonored check;

(v) a finance or credit charge, penalty or charge for delayed payment, or discount for prompt payment;

(vi) a charge for ~~reconnection of service or for replacement of service~~ CONSTRUCTION or relocation of facilities;

(vii) the INSTALLATION, repair, inspection, or servicing of equipment AND WIRING located on customer

1 premises;

2 (viii) bad debt;

3 (ix) a charge added by a hotel, motel, or similar facility for telecommunications services used in  
4 placing calls for guests;

5 (x) charges paid by inserting coins in coin-operated telecommunications devices; and

6 (xi) charges for telecommunications services that have been prepaid by a prepaid calling card that  
7 enables the origination of calls by using an access number or authorization code.

8 ~~(4)(9)(6)(4)~~ "Service address" means:

9 (a) the location from where the retail telecommunications services originated or where the retail  
10 telecommunications services are received; or

11 (b) where there is not a defined location, the location in Montana where the statement of charges  
12 for retail telecommunications services is mailed.

13 ~~—— (10) "Serving carrier" means a facilities-based carrier providing mobile telecommunications services~~  
14 ~~to a customer outside a home service provider's or reseller's licensed service area.~~

15 ~~(5)(11)(7)(5)~~ "Telecommunications services provider" means a person providing retail  
16 telecommunications services."

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18 ~~—— Section 3. Section 15-53-130, MCA, is amended to read:~~

19 ~~—— "15-53-130. Imposition of retail telecommunications excise tax -- rate. (1) An excise tax of 3.75%~~  
20 ~~is imposed;~~

21 ~~—— (a) prior to July 1, 2002, at a rate of 5% on the sales price of retail telecommunications services;~~  
22 ~~and~~

23 ~~—— (b) after June 30, 2002, at a rate of 4.84% on the sales price of retail communications services~~  
24 ~~and mobile telecommunications services.~~

25 ~~—— (2) The tax is imposed on the purchaser and must be collected by the telecommunications services~~  
26 ~~provider."~~

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28 ~~—— NEW SECTION. SECTION 4. REPEALER. SECTIONS 15-53-201, 15-53-202, AND 15-53-203, MCA, ARE~~  
29 ~~REPEALED.~~

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**SECTION 2. SECTION 15-53-202, MCA, IS AMENDED TO READ:**

**"15-53-202. (Temporary) Advanced telecommunications infrastructure tax credit -- temporary suspension.** (1) ~~There~~ Except as provided in subsection (4), there is allowed a tax credit against the tax imposed by part 1 of this chapter for advanced telecommunications infrastructure improvements in the state made by a telecommunications services provider in an amount equal to 20% of the total amount of the infrastructure investment.

(2) The tax credit provided for in subsection (1) may not exceed a total of \$2 million for all qualified telecommunications services providers in any consecutive 12-month period.

(3) There is no carryback or carryforward of the credit allowed under this section, and the credit must be applied in the year the advanced telecommunications infrastructure improvements were made and may not be refunded if the taxpayer has no tax liability.

(4) The credit allowed under this section may not be claimed for investments in advanced telecommunications infrastructure improvements made after June 30, 2001, and before July 1, 2003.  
(Terminates July 1, 2004--sec. 8, Ch. 534, L. 1999.)"

~~NEW SECTION. Section 5. Codification instruction. [Section 1] is [SECTIONS 1 AND 2] ARE intended to be codified as an integral part of Title 15, chapter 53, part 1, and the provisions of Title 15, chapter 53, part 1, apply to [section 1] [SECTIONS 1 AND 2].~~

**NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. Section 4. Applicability. ~~[This act] (1) EXCEPT AS PROVIDED IN SUBSECTION (2), [THIS ACT] [THIS ACT] applies to charges on or revenue from customer bills issued on or after March 31~~ FEDERAL SUBSCRIBER LINE CHARGES AND OTHER FEDERALLY IMPOSED AUTHORIZED CHARGES AND FEES RETAINED COLLECTED BUT NOT REMITTED TO A FEDERAL GOVERNMENTAL ENTITY BY THE TELECOMMUNICATIONS CARRIER AND ON INSTALLATION AND SERVICE CONNECTION TO RETAIL TELECOMMUNICATIONS INSTALLATION AND ACTIVATION CHARGES MADE ONLY AFTER JUNE 30, 2001.

~~(2) [SECTIONS 1 AND 2] APPLY TO CUSTOMER BILLS ISSUED AFTER JULY 31, 2002.~~

NEW SECTION. SECTION 5. TERMINATION. [SECTION 4 2] TERMINATES JULY 1, 2003.

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